

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLIFFORD F. TUTTLE, JR., et al.
Consolidated with
JOHN NICHOLAS, et al.

Plaintiffs,

v.

CITY OF HOUSTON, et al.

Defendants.

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CASE NO. 4:21-CV-00270

**FELIPE GALLEGOS’S PARTIALLY UNOPPOSED MOTION FOR STAY PENDING
APPEAL TO THE FIFTH CIRCUIT COURT OF APPEALS**

Defendant Officer Felipe Gallegos files this partially unopposed motion for a stay of proceedings in this Court pending Gallegos’s appeal of this Court’s summary judgment ruling to the Fifth Circuit. *See* [Dkt. 440]. In support of this motion, Mr. Gallegos would show as follows:

On April 15, 2025, Defendant Felipe Gallegos timely filed a notice of appeal of this Court’s Order denying Gallegos’s motion for summary judgment on, among other things, Gallegos’s defense of qualified immunity. *See* [Dkts. 440, 438]. Officer Gallegos filed this interlocutory appeal under the collateral order doctrine pursuant to *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985).

In *Mitchell*, the Supreme Court held that “[b]ecause immunity is effectively lost if a case is erroneously permitted to go to trial, a denial of qualified immunity may be immediately appealed.” *See id.* at 526-27 (cleaned up). In addition, “[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district of its control over those aspects of the case involved in the appeal.” *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

Thus Mr. Gallegos seeks a stay of all proceedings in this Court related to those aspects of the case which are currently on appeal, *ie.*, the claims against Gallegos and his defense of qualified immunity. This would include a continuance of the current trial setting, which is scheduled for docket call on May 2, 2025, with a jury trial beginning on May 5, 2025.

All parties have indicated that they are unopposed to a stay to the extent it continues the current May trial setting to a date after proceedings related to Mr. Gallegos's appeal have concluded. In response to a request to confer, counsel for the plaintiff's indicated, however, that the plaintiffs "would oppose a motion to completely stay the case."

To the extent there may be matters related to the case that do not implicate aspects of the case involved in Mr. Gallegos's appeal, Mr. Gallegos also would not oppose the Court continuing to exercise jurisdiction over such matters—though Mr. Gallegos notes that discovery in the case has concluded, so the scope of matters unrelated to Mr. Gallegos's appeal would appear to be narrow.

[Conclusion and signatures on following page . . .]

CONCLUSION

For the foregoing reasons, Felipe Gallegos respectfully requests that the Court stay all aspects of the case relating to Mr. Gallegos's appeal and continue the current trial setting to a date to be determined after proceedings related to Mr. Gallegos's appeal conclude.

Dated: April 22, 2025

Respectfully submitted,

/s/ Russell Hardin, Jr.

Russell Hardin, Jr.

Attorney-in-Charge

Texas State Bar No. 08972800

Southern District of Texas No. 19424

Email: rhardin@rustyhardin.com

OF COUNSEL:

RUSTY HARDIN & ASSOCIATES, LLP

Marshall Douglas Murphy (Of Counsel to the Firm)

State Bar No. 24013215

Federal I.D. No. 24254

Letitia D. Quinones (Of Counsel to the Firm)

State Bar No. 24008433

Federal I.D. No. 23722

John MacVane (Of Counsel to the Firm)

State Bar No. 24085444

Federal I.D. No. 2209776

1401 McKinney Street, Suite 2250

Houston, Texas 77010

Telephone: (713) 652-9000

Facsimile: (713) 652-9800

Email: rhardin@rustyhardin.com

Email: dmurphy@rustyhardin.com

Email: lquinones@rustyhardin.com

Email: jmacvane@rustyhardin.com

ATTORNEYS FOR DEFENDANT

FELIPE GALLEGOS

CERTIFICATE OF CONFERENCE

I conferred with all parties regarding the forgoing motion. All parties were unopposed to the motion to the extent it continued the May 2025 trial setting. Counsel for Plaintiffs noted, however, that the Plaintiffs "oppose a motion to completely stay the case."

/s/ John MacVane

John MacVane

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2025, a true and correct copy of the foregoing was delivered to all parties through their counsel(s) of record, in accordance with the Rules, via email or CM/ECF to the following:

Michael Patrick Doyle
mdoyle@doylelawfirm.com
Jeffrey I. Avery
jeffavery@doylelawfirm.com
Patrick M. Dennis
Doyle LLP
3401 Allen Parkway, Suite 100
Houston, Texas 77019
service@doylelawfirm.com

Michael T. Gallagher
mike@gld-law.com
L. Boyd Smith, Jr.
bsmith@fld-law.com
Pamela R. McLemore
pamm@gld-law.com
The Gallagher Law Firm
2905 Sackett St
Houston, TX 77098

Charles Bourque, Jr.
St. Martin & Bourque
315 Barrow St
Houma, LA 70360
cbourque@stmbllaw.com

Dwayne Richard Day
Attorney at Law
3401 Allen Pkwy, Suite 100
Houston, TX 77019
Fax: 713-759-6930
dday@ddaylaw.com

David Allen Nachtigall
Attorney at Law, PLLC
1545 Heights, Ste. 100
Houston, TX 77008
david@dntriallaw.com

Alistair B. Dawson
adawson@beckredden.com Lena
Elizabeth Silva
lsilva@beckredden.com Garrett
Scott Brawley
gbrawley@beckredden.com Beck
Redden LLP
1221 McKinney, Ste 4500
Houston, TX 77010

Harold Al Odom, III Odom
Law Firm
601 Sawyer, Suite 225
Houston, TX 77007
aodom@aodomainlawfirm.com

Christy L. Martin
christy.martin@houstontx.gov
Melissa Azadeh
melissa.azadeh@houstontx.gov
Kelly Ann Dempsey
kelly.dempsey@houstontx.gov
Alexander E. Garcia
alexander.garcia@houstontx.gov
Michelle Charlene Taylor
michelle.taylor2@houstontx.gov
City of Houston
900 Bagby St., 3rd Floor
Houston, Texas 77002

/s/ John MacVane
John MacVane